

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0660-IWD-E **TCEQ ID:** RN101610749 **CASE NO.:** 33287
RESPONDENT NAME: Texas Westmoreland Coal Co.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Jewett Lignite Surface Mine, located at 12420 State Highway 39, approximately six miles northwest of the city of Jewett, in Leon, Limestone, and Freestone Counties</p> <p>TYPE OF OPERATION: Lignite surface mine</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 17, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Enforcement Division, Enforcement Team 3, R-04, (817) 588-5890; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Mark Seglem, President, Texas Westmoreland Coal Co., P.O. Box 915, Jewett, Texas 75846; Mr. J. Denny Kingston, Engineering Manager, Texas Westmoreland Coal Co., P.O. Box 915, Jewett, Texas 75846 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 7, 2007</p> <p>Date of NOE Relating to this Case: March 16, 2007 (NOE)</p> <p>Background Facts: This was a routine records review. One violation was documented.</p> <p>WATER</p> <p>1) Failure to comply with the permitted effluent limits [30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), TPDES Permit No. 02653, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 104A and Outfall 001A].</p>	<p>Total Assessed: \$10,625</p> <p>Total Deferred: \$2,125 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$8,500</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 02653.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

TCEQ

DATES

Assigned

23-Apr-2007

PCW

6-Jun-2007

Screening

24-Apr-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Texas Westmoreland Coal Co.

Reg. Ent. Ref. No. RN101610749

Facility/Site Region 9-Waco

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 33287

Docket No. 2007-0660-IWD-E

Media Program(s) Water Quality

Multi-Media

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 2

Order Type 1660

Enf. Coordinator Cari-Michel La Caille

EC's Team EnforcementTeam 3

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$8,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 25% Enhancement

Subtotals 2, 3, & 7 \$2,125

Notes A 25% enhancement is recommended for having five NOV's for self-reported effluent data violations within the last five years.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$396

Approx. Cost of Compliance \$4,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$10,625

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$10,625

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$10,625

DEFERRAL

20%

Reduction

Adjustment -\$2,125

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$8,500

Screening Date 24-Apr-2007

Docket No. 2007-0660-IWD-E

PCW

Respondent Texas Westmoreland Coal Co.

Policy Revision 2 (September 2002)

Case ID No. 33287

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101610749

Media [Statute] Water Quality

Enf. Coordinator Cari-Michel La Caille

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	5	25%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

A 25% enhancement is recommended for having five NOV's for self-reported effluent data violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 24-Apr-2007

Docket No. 2007-0660-IWD-E

PCW

Respondent Texas Westmoreland Coal Co.

Policy Revision 2 (September 2002)

Case ID No. 33287

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101610749

Media [Statute] Water Quality

Enf. Coordinator Cari-Michel La Caille

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a), TPDES Permit No. 02653, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 104A

Violation Description

Failed to comply with the permitted effluent limits as documented during a record review conducted on February 7, 2007. See attached effluent violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate carbonaceous biochemical oxygen demand ("CBOD") and ammonia nitrogen ("NH3-N") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Daily average flow values were also considered. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

89

Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Three monthly events are recommended for the monitoring periods ending on January 31, 2006, February 28, 2006 and November 30, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$396

Violation Final Penalty Total \$9,375

This violation Final Assessed Penalty (adjusted for limits) \$9,375

Economic Benefit Worksheet

Respondent Texas Westmoreland Coal Co.
Case ID No. 33287
Reg. Ent. Reference No. RN101610749
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$4,000	31-Jan-2006	24-Jan-2008	2.0	\$396	n/a	\$396

Notes for DELAYED costs

The estimated cost for additional oversight and sampling which could of reduced or alleviated the exceedances. Date required is the date the noncompliance started and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$396

Screening Date 24-Apr-2007

Docket No. 2007-0660-IWD-E

PCW

Respondent Texas Westmoreland Coal Co.

Policy Revision 2 (September 2002)

Case ID No. 33287

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101610749

Media [Statute] Water Quality

Enf. Coordinator Cari-Michel La Caille

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a), TPDES Permit No. 02653, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001A

Violation Description

Failed to comply with the permitted effluent limits as documented during a record review conducted on February 7, 2007. See attached effluent violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

59 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended for the monitoring periods ending on December 31, 2005 and February 28, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent Texas Westmoreland Coal Co.
Case ID No. 33287
Reg. Ent. Reference No. RN101610749
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

See violation no. 1.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Effluent Violation Table
Texas Westmoreland Coal Co.
TPDES Permit No. 02653
Docket No. 2007-0660-IWD-E

Permitted Effluent Limits Outfall 104A	Monitoring Period End Date			Permitted Effluent Limits Outfall 001A	Monitoring Period End Date	
	01/31/06	02/28/06	11/30/06		12/31/05	02/28/06
CBOD Daily Avg. 10 mg/L	274	123	11.5	TSS Daily Avg. 35 mg/L	45.8	36.5
CBOD Daily Max. 20 mg/L	296	123	C	TSS Daily Max. 70 mg/L	77	72
NH₃-N Daily Avg. 2 mg/L	92	50.4	39.95	Iron Daily Avg. 3 mg/L	7.82	C
NH₃-N Daily Max. 4 mg/L	100	50.4	47.40	Iron Daily Max. 6 mg/L	11.60	C

TSS = Total Suspended Solids	NH ₃ -N = Ammonia Nitrogen	C= Compliant
Avg.= Average	Max. = Maximum	mg/L = Milligrams per liter
CBOD= Carbonaceous Biochemical Demand		

Compliance History

Customer/Respondent/Owner-Operator:	CN602890360	Texas Westmoreland Coal Co.	Classification: AVERAGE	Rating: 2.43
Regulated Entity:	RN101610749	JEWETT LIGNITE SURFACE MINE	Classification: AVERAGE	Site Rating: 0.15
ID Number(s):	WASTEWATER	PERMIT	WQ0002653000	
	WASTEWATER	PERMIT	TPDES0086541	
	WASTEWATER	PERMIT	TX0086541	
	PETROLEUM STORAGE TANK	REGISTRATION	19956	
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD982550774	
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION #	38502	
	WASTEWATER LICENSING	LICENSE	WQ0002653000	
Location:	LOCATED AT 12420 SH 39, APPROX. 6 MILES NW OF JEWETT IN LEON, LIMESTONE, AND FREESTONE COUNTIES			Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	April 23, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 23, 2002 to April 23, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cari-Michel La Caille	Phone:	512-239-1387	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----|--|----------|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|---|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|----|------------|----------|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| B. | Any criminal convictions of the state of Texas and the federal government. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| C. | Chronic excessive emissions events. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| N/A | <table> <tr><td>1</td><td>04/26/2002</td><td>(209068)</td></tr> <tr><td>2</td><td>05/28/2002</td><td>(209071)</td></tr> <tr><td>3</td><td>06/26/2002</td><td>(209073)</td></tr> <tr><td>4</td><td>07/26/2002</td><td>(209075)</td></tr> <tr><td>5</td><td>08/23/2002</td><td>(209078)</td></tr> <tr><td>6</td><td>09/26/2002</td><td>(209081)</td></tr> <tr><td>7</td><td>10/29/2002</td><td>(209084)</td></tr> <tr><td>8</td><td>11/27/2002</td><td>(209088)</td></tr> <tr><td>9</td><td>12/30/2002</td><td>(209090)</td></tr> <tr><td>10</td><td>01/27/2003</td><td>(209092)</td></tr> <tr><td>11</td><td>02/26/2003</td><td>(209063)</td></tr> <tr><td>12</td><td>04/02/2003</td><td>(209066)</td></tr> <tr><td>13</td><td>04/30/2003</td><td>(209069)</td></tr> <tr><td>14</td><td>05/30/2003</td><td>(317016)</td></tr> <tr><td>15</td><td>06/26/2003</td><td>(317017)</td></tr> <tr><td>16</td><td>07/28/2003</td><td>(317018)</td></tr> <tr><td>17</td><td>08/29/2003</td><td>(317019)</td></tr> <tr><td>18</td><td>09/25/2003</td><td>(317020)</td></tr> <tr><td>19</td><td>10/27/2003</td><td>(317021)</td></tr> </table> | 1 | 04/26/2002 | (209068) | 2 | 05/28/2002 | (209071) | 3 | 06/26/2002 | (209073) | 4 | 07/26/2002 | (209075) | 5 | 08/23/2002 | (209078) | 6 | 09/26/2002 | (209081) | 7 | 10/29/2002 | (209084) | 8 | 11/27/2002 | (209088) | 9 | 12/30/2002 | (209090) | 10 | 01/27/2003 | (209092) | 11 | 02/26/2003 | (209063) | 12 | 04/02/2003 | (209066) | 13 | 04/30/2003 | (209069) | 14 | 05/30/2003 | (317016) | 15 | 06/26/2003 | (317017) | 16 | 07/28/2003 | (317018) | 17 | 08/29/2003 | (317019) | 18 | 09/25/2003 | (317020) | 19 | 10/27/2003 | (317021) |
| 1 | 04/26/2002 | (209068) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 05/28/2002 | (209071) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | 06/26/2002 | (209073) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | 07/26/2002 | (209075) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | 08/23/2002 | (209078) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | 09/26/2002 | (209081) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | 10/29/2002 | (209084) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | 11/27/2002 | (209088) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | 12/30/2002 | (209090) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | 01/27/2003 | (209092) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | 02/26/2003 | (209063) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | 04/02/2003 | (209066) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | 04/30/2003 | (209069) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | 05/30/2003 | (317016) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | 06/26/2003 | (317017) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16 | 07/28/2003 | (317018) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17 | 08/29/2003 | (317019) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 18 | 09/25/2003 | (317020) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 19 | 10/27/2003 | (317021) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

20	12/01/2003	(317022)
21	01/08/2004	(317023)
22	01/26/2004	(317024)
23	02/23/2004	(317014)
24	03/29/2004	(317015)
25	04/29/2004	(361167)
26	05/24/2004	(361168)
27	06/29/2004	(361169)
28	06/29/2004	(361170)
29	07/26/2004	(361171)
30	08/22/2004	(361172)
31	10/25/2004	(361173)
32	12/01/2004	(387013)
33	12/27/2004	(387014)
34	01/24/2005	(387015)
35	03/02/2005	(424803)
36	03/25/2005	(424804)
37	05/02/2005	(424805)
38	06/02/2005	(424806)
39	06/23/2005	(424807)
40	07/22/2005	(445460)
41	09/09/2005	(445461)
42	10/03/2005	(476969)
43	10/28/2005	(476970)
44	12/27/2005	(476971)
45	12/27/2005	(476972)
46	02/24/2006	(476973)
47	07/19/2006	(526109)
48	07/19/2006	(526110)
49	07/19/2006	(526111)
50	07/19/2006	(526107)
51	07/19/2006	(526108)
52	07/21/2006	(526112)
53	08/16/2006	(526113)
54	09/27/2006	(526114)
55	10/20/2006	(550455)
56	11/28/2006	(550456)
57	01/03/2007	(550457)
58	03/16/2007	(539738)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	09/30/2003	(317021)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	12/31/2005	(476973)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	01/31/2006	(526107)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2006	(526108)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	11/30/2006	(550457)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TEXAS WESTMORELAND COAL CO.
RN101610749

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-0660-IWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas Westmoreland Coal Co. ("Texas Westmoreland Coal") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Texas Westmoreland Coal appear before the Commission and together stipulate that:

1. Texas Westmoreland Coal owns and operates a lignite surface mine located at 12420 State Highway 39, approximately six miles northwest of Jewett in Leon, Limestone, and Freestone Counties, Texas (the "Facility").
2. Texas Westmoreland Coal has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Texas Westmoreland Coal agree that the Commission has jurisdiction to enter this Agreed Order, and that Texas Westmoreland Coal is subject to the Commission's jurisdiction.
4. Texas Westmoreland Coal received notice of the violations alleged in Section II ("Allegations") on or about March 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Texas Westmoreland Coal of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Ten Thousand Six Hundred Twenty-Five Dollars (\$10,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Texas Westmoreland Coal has paid Eight Thousand Five Hundred Dollars (\$8,500) of the administrative penalty and Two Thousand One Hundred Twenty-Five Dollars (\$2,125) is deferred contingent upon Texas Westmoreland Coal's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Texas Westmoreland Coal fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Texas Westmoreland Coal to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Texas Westmoreland Coal have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Texas Westmoreland Coal has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Texas Westmoreland Coal is alleged to have failed to comply with the permitted effluent limits, in violation of 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 02653, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 104A and Outfall 001A, as documented during a record review conducted on February 7, 2007, as indicated in the table below.

Effluent Violation Table Texas Westmoreland Coal Co. TPDES Permit No. 02653 Docket No. 2007-0660-IWD-E						
Permitted Effluent Limits Outfall 104A	Monitoring Period End Date			Permitted Effluent Limits Outfall 001A	Monitoring Period End Date	
	01/31/06	02/28/06	11/30/06		12/31/05	02/28/06
CBOD Daily Avg. 10 mg/L	274	123	11.5	TSS Daily Avg. 35 mg/L	45.8	36.5
CBOD Daily Max. 20 mg/L	296	123	C	TSS Daily Max. 70 mg/L	77	72
NH₃-N Daily Avg. 2 mg/L	92	50.4	39.95	Iron Daily Avg. 3 mg/L	7.82	C
NH₃-N Daily Max. 4 mg/L	100	50.4	47.40	Iron Daily Max. 6 mg/L	11.60	C

TSS = Total Suspended Solids	NH ₃ -N = Ammonia Nitrogen	C= Compliant
Avg.= Average	Max. = Maximum	mg/L = Milligrams per liter
CBOD= Carbonaceous Biochemical Demand		

III. DENIALS

Texas Westmoreland Coal generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Texas Westmoreland Coal pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Texas Westmoreland Coal's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas Westmoreland Coal Co., Docket No. 2007-0660-IWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Texas Westmoreland Coal shall undertake the following technical requirements:

Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 02653. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon Texas Westmoreland Coal. Texas Westmoreland Coal is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Texas Westmoreland Coal fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Texas Westmoreland Coal's failure to comply is not a violation of this Agreed Order. Texas Westmoreland Coal shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Texas Westmoreland Coal shall notify the Executive Director within seven days after Texas Westmoreland Coal becomes

aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order; upon a written and substantiated showing of good cause. All requests for extensions by Texas Westmoreland Coal shall be made in writing to the Executive Director. Extensions are not effective until Texas Westmoreland Coal receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Texas Westmoreland Coal in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Texas Westmoreland Coal, or three days after the date on which the Commission mails notice of the Order to Texas Westmoreland Coal, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

08/28/2007 11:45 FAX

RECEIVED:

TWCC ENV ENG

AUG 28 2007 12:41 PM


001/001

Texas Westmoreland Coal Co.
DOCKET NO. 2007-0660-IWD-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

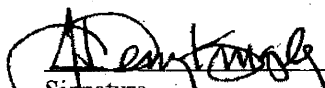
9/7/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

7-09-2007
Date

J. Denny Kingsley
Name (Printed or typed)
Authorized Representative of
Texas Westmoreland Coal Co.

Engineering Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

